

**International Brotherhood of Teamsters, Local No. 251, AFL-CIO (Ryder Student Transportation) and Ann Greenwood and Ann Ramos and Francisco Santana.** Cases 1-CB-9273, 1-CB-9274, and 1-CB-9280

April 18, 2001

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS  
HURTGEN  
AND WALSH

On April 28, 1999, Administrative Law Judge Arthur J. Amchan issued the attached decision. The General Counsel and the Respondent filed exceptions and supporting briefs, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions as modified and to adopt the recommended Order as modified and set forth in full below.

The judge found that the Respondent violated Section 8(b)(1)(A) of the Act by attempting to collect union dues from employees Francisco Santana, Alicia Ramos, and Ann Greenwood pursuant to a contractual union-security clause without notifying them of their rights under *NLRB v. General Motors Corp.*<sup>1</sup> to be dues-paying nonmembers and of the rights of nonmembers under *Communications Workers v. Beck*<sup>2</sup> to object to the expenditure of their dues on nonrepresentational activities and to obtain a commensurate reduction in dues and fees. The judge also found that the Respondent violated Section 8(b)(1)(A) and (2) by asking the Employer to discharge those employees, and by causing it to discharge Santana and to suspend Ramos and Greenwood, for failing to pay dues pursuant to the union-security clause. We affirm those findings.<sup>3</sup>

<sup>1</sup> 373 U.S. 734 (1963).

<sup>2</sup> 487 U.S. 735 (1988).

<sup>3</sup> A union ordinarily may not lawfully seek to have an employee discharged for failing to pay dues under a union-security clause when it has not informed the employee of his or her *Beck* rights. *Production Workers Local 707 (Mavo Leasing)*, 322 NLRB 35 (1996), enf'd. 161 F.3d 1047 (7th Cir. 1998).

No exceptions were filed to the judge's findings that the Respondent acted unlawfully with regard to Ramos and Greenwood.

Although the judge found that "Santana appears to be a classic 'free rider'" as that term is used in, e.g., *Seafarers Great Lakes District (Tomlinson Fleet Corp.)*, 149 NLRB 1114, 1120-1121 (1964), the record does not indicate that Santana would have refused to pay even the representational portion of his delinquent dues had he been apprised of his rights under *Beck* and *General Motors*. We therefore find it

The judge, however, found it unnecessary to address the General Counsel's allegation that the Respondent also acted unlawfully by pursuing to arbitration a grievance concerning the Employer's failure to discharge Ramos and Greenwood as it had requested. The judge found that, even if that conduct constituted a violation, it was duplicative of the other violations found. The General Counsel has excepted to the judge's failure to find a separate violation, and we find merit in that exception. Although taking the grievance to arbitration was, in a sense, a continuation of the Respondent's original unlawful attempt to have the two employees discharged, it was also a separate and distinct act. Moreover, in attending the arbitration, Ramos and Greenwood may have lost earnings if they had to take time off from work, and also may have incurred expenses in the process. For these reasons, we find that the Respondent violated Section 8(b)(1)(A) and (2) by pursuing the grievance to arbitration, and we shall modify the Order and notice to provide for Ramos and Greenwood to be made whole for any earnings they may have lost and expenses they may have incurred as a result of attending the arbitration proceeding.

The judge ordered the Respondent to make the discriminatees whole by paying them backpay for the earnings they lost as a result of its unlawful actions. However, he also recommended that the Respondent be allowed to offset against its backpay liability any dues lawfully owed by the discriminatees. The General Counsel has excepted to the latter provision. Again, we find merit in that exception. The Board has held that collection of dues is an internal union matter and that it is improper to allow a union to inject such a matter into compliance proceedings and thus, in effect, to litigate a private cause of action as a claimed general creditor.<sup>4</sup> We shall, therefore, delete the dues offset provisions from the judge's recommended Order and notice.<sup>5</sup>

unnecessary to pass on the judge's suggestion that a union can never lawfully attempt to have an employee—even a true "free rider"—discharged for failure to comply with the requirements of a union-security clause unless it first informs him of those rights.

<sup>4</sup> *Teamsters Local 705 (Randolph Paper Co.)*, 227 NLRB 694 (1977). In that case, the Board reasoned that the Act does not confer private rights, but exists to enforce the public interest in preventing unfair labor practices. Thus, a backpay right is not a private right, but a public one imposed to enforce the law against the violator, discourage unlawful discrimination, and thereby vindicate the policies of the Act. It would be contrary to those purposes to allow a union to reduce the amount of backpay owed by the amount of its private claim for dues.

<sup>5</sup> We shall also modify the Order and notice to be consistent with the Board's decision in *Mavo Leasing*, supra.

## AMENDED REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent unlawfully caused the Employer to discharge Francisco Santana and to suspend Alicia Ramos and Ann Greenwood, we shall order the Respondent to notify the Employer in writing, with copies to the discriminatees, that it has no objection to their employment and that it affirmatively requests Santana's reinstatement. We shall also order the Respondent to notify Santana, Ramos, and Greenwood of their rights under *General Motors* and *Beck* and to inform them that they are not subject to discharge or suspension for nonpayment of union dues in the absence of such notification.<sup>6</sup> We shall further order the Respondent to make Ramos and Greenwood whole for any loss of wages and benefits they may have suffered as a result of its unlawful conduct, and for any loss of earnings or expenses they may have incurred as a result of attending the October 1998 arbitration, less net interim earnings. In addition, we shall order the Respondent to make Santana whole for any loss of wages and benefits he may have suffered as a result of the Respondent's conduct until he is either reinstated by the Employer to his former or a substantially equivalent position, or until he obtains substantially equivalent employment elsewhere, less net interim earnings.<sup>7</sup> All amounts of make-whole relief shall be computed with interest as provided for in *New Horizons for the Retarded*.<sup>8</sup>

## ORDER

The National Labor Relations Board orders that the Respondent, International Brotherhood of Teamsters, Local No. 251, AFL-CIO, Providence, Rhode Island, its officers, agents, and representatives, shall

## 1. Cease and desist from

(a) Failing to notify bargaining unit employees, when it first seeks to obligate them to pay fees and dues under a union-security clause, of their right under *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963), to be and remain nonmembers and of the rights of nonmembers

under *Communications Workers v. Beck*, 487 U.S. 735 (1988), to object to paying dues and fees for union activities that are not germane to the Respondent's duties as bargaining agent and to obtain a reduction in dues and fees for such activities.

(b) Causing or attempting to cause Ryder Student Transportation to suspend or discharge Francisco Santana, Alicia Ramos, Ann Greenwood, or any other employees for failing to pay union dues pursuant to a union-security clause without first notifying them of their *General Motors* and *Beck* rights, advising them of the amount of the dues delinquency, and affording them a reasonable opportunity to pay the amounts owed.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Notify Francisco Santana, Alicia Ramos, and Ann Greenwood in writing of their rights under *General Motors* to be and remain nonmembers and of the rights of nonmembers under *Beck* to object to paying for union activities not germane to the Respondent's duties as bargaining agent and to obtain a reduction in dues and fees for such activities. The notice must also include sufficient information to enable the employees to intelligently decide whether to object, as well as a description of any internal union procedures for filing objections.

(b) Make whole Francisco Santana, Alicia Ramos, and Ann Greenwood for any loss of wages or other rights and benefits they may have suffered, or any expenses they may have incurred, as a result of the Respondent's unlawful conduct, in the manner set forth in the amended remedy section of this decision.

(c) Notify Ryder Student Transportation, in writing, with copies to Santana, Ramos, and Greenwood, that it has no objection to their employment and that it requests that Santana be reinstated.

(d) Notify Santana, Ramos, and Greenwood that it will not cause or attempt to cause Ryder Student Transportation to discharge or suspend them for nonpayment of dues without first notifying them of their *General Motors* and *Beck* rights and affording them a reasonable opportunity to pay the amounts owed.

(e) Within 14 days from the date of this Order, remove from its files, and ask Ryder Student Transportation to remove from its files, any reference to the discharge of Santana and the suspensions of Ramos and Greenwood, and within 3 days thereafter notify the employees in writing that this has been done and that the discharge and suspensions will not be used against them in any way.

<sup>6</sup> The complaint allegations are limited to the Respondent's failure to inform Santana, Ramos, and Greenwood of their *General Motors* and *Beck* rights and its requesting their discharges and causing the discharge of Santana and the suspensions of Ramos and Greenwood. The complaint does not allege a failure to inform unit employees generally of their *General Motors* and *Beck* rights. The amended remedy therefore addresses the violations alleged and found. See *Mavo Leasing*, supra, 322 NLRB at 36 fn. 2.

<sup>7</sup> Id. at 36; *Sheet Metal Workers Local 355 (Zinsco Electrical Products)*, 254 NLRB 773 (1981).

<sup>8</sup> 283 NLRB 1173 (1987).

(f) Within 14 days after service by the Region, post at its business office and meeting hall copies of the attached notice marked "Appendix."<sup>9</sup> Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

#### APPENDIX

#### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE National Labor Relations Board An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail to notify bargaining unit employees, when we first seek to obligate them to pay fees and dues under a union-security clause, of their right under *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963), to be and remain nonmembers and of the rights of nonmembers under *Communications Workers v. Beck*, 487 U.S. 735 (1988), to object to paying dues and fees for activities that are not germane to our duties as bargaining agent and to obtain a reduction in dues and fees for such activities.

WE WILL NOT cause or attempt to cause Ryder Student Transportation to suspend or discharge Francisco Santana, Alicia Ramos, Ann Greenwood, or any other

employees for failing to pay union dues pursuant to a union-security clause without first notifying them of their *General Motors* and *Beck* rights, advising them of the amount of the dues delinquency, and affording them a reasonable opportunity to pay the amounts owed.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL notify Francisco Santana, Alicia Ramos, and Ann Greenwood in writing of their rights under *General Motors* to be and remain nonmembers and of the rights of nonmembers under *Beck* to object to paying for union activities not germane to our duties as bargaining agent and to obtain a reduction in dues and fees for such activities. The notice will also include sufficient information to enable the employees to intelligently decide whether to object, as well as a description of any internal union procedures for filing objections.

WE WILL make whole Francisco Santana, Alicia Ramos, and Ann Greenwood for any loss of wages or other rights and benefits they may have suffered, or any expenses they may have incurred, with interest, as a result of our unlawful conduct.

WE WILL notify Ryder Student Transportation, in writing, with copies to Santana, Ramos, and Greenwood, that we have no objection to their employment and that we request that Santana be reinstated.

WE WILL notify Santana, Ramos, and Greenwood that we will not cause or attempt to cause Ryder Student Transportation to discharge or suspend them for nonpayment of dues without first notifying them of their *General Motors* and *Beck* rights and affording them a reasonable opportunity to pay the amounts owed.

WE WILL, within 14 days from the date of the Board's Order, remove from our files, and ask Ryder Student Transportation to remove from its files, any reference to the discharge of Santana and the suspensions of Ramos and Greenwood, and within 3 days thereafter notify the employees in writing that this has been done and that the discharge and suspensions will not be used against them in any way.

#### INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL NO. 251, AFL-CIO

Donald C. Firenze, Esq., for the General Counsel.  
Marc Gursky, Esq. (*Gursky Law Associates*), of Providence,  
Rhode Island, for the Respondent, IBT Local 251.

#### DECISION

#### STATEMENT OF THE CASE

ARTHUR J. AMCHAN, Administrative Law Judge. This case was tried in Boston, Massachusetts, on February 11 and 12, 1999. The charges in Cases 1-CB-9273 and 1-CB-9274

<sup>9</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

were filed June 15, 1998; the charge in Case 1-CB-9280 was filed June 24, 1998. The consolidated complaint was issued September 23, 1998.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent Union, I make the following

## FINDINGS OF FACT

### I. JURISDICTION

Ryder Student Transportation (Ryder) is a corporation with an office and place of business in Providence, Rhode Island, where it is engaged in the transportation of school children. Ryder annually derives gross revenues in excess of \$250,000 and performs services valued in excess of \$50,000 in States other than Rhode Island. Ryder is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and the Union, International Brotherhood of Teamsters (IBT), Local 251, is a labor organization within the meaning of Section 2(5) of the Act.

### II. ALLEGED UNFAIR LABOR PRACTICES

The General Counsel alleges that Respondent, IBT Local 251, violated Section 8(b)(1)(A) and (2) with regard to Alicia Ramos, Ann Greenwood, and Francisco Santana, all of whom were school bus drivers employed by Ryder Student Transportation. The Union requested that Ryder discharge all three employees in the spring of 1998, pursuant to the union-security clause of their collective-bargaining agreement. Pursuant to these requests, Ryder suspended Ramos and Greenwood for two shifts and terminated Santana's employment.<sup>1</sup> The issue in these cases is whether the Union was entitled to invoke the union-security clause and seek the discharge of these three employees for nonpayment of dues.

#### Francisco Santana

Francisco Santana was hired by Ryder as a school bus driver on February 10, 1997. Within a month or two of his hiring, Local 251's steward, Wally Akimbi, informed Santana that he had to join the Union. Santana never did so and never paid any dues to the Union.<sup>2</sup>

On May 26, 1998, Business Agent Ed Wiggin sent Santana a letter which stated:

After reviewing our records, we have found that you are not a member of this Local Union. In accordance with the Collective Bargaining Agreement, in order to maintain your employment at Ryder Bus, you must become a member in good

standing, of Teamsters Local Union No. 251. Therefore, please be advised that you have seventy-two (72) hours after receipt of this letter to appear at the Union Hall and become a member of this Local.

If you fail to appear, appropriate action will be taken.

On May 28, Wiggin handed a copy of this letter to Santana. Within a few days, Union Steward Joyce Brazenor told Santana that he had to join the Union or he would be terminated. Santana replied that he was willing to join the Union but would not pay back dues.

Thereafter, on June 8, the Union wrote Ryder requesting Santana's termination in accordance with the collective-bargaining agreement. The letter referred to Santana's conversation with Brazenor and indicated that Santana's willingness to pay dues prospectively was not acceptable to it. On June 10, Mark Aussubel, Ryder's contract manager, summoned Santana to his office. Santana reiterated his refusal to pay back dues and Aussubel terminated him.<sup>3</sup>

#### Analysis with regard to Santana

Francisco Santana appears to be a classic "free rider." He was willing to take advantage of the Union's failure to collect his dues to avoid paying amounts that he was clearly required to pay under the terms of the collective-bargaining agreement. On the other hand, the Union did not comply with its statutory obligations.

In *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963), the U.S. Supreme Court held that an employee's membership obligation under a union-security clause is limited to its "financial core", i.e., paying an amount equivalent to initiation fees and dues. More recently, in *Communications Workers v. Beck*, 487 U.S. 735, 108 S.Ct. 2641 (1988), the Court held that Section 8(a)(3) of the National Labor Relations Act does not permit a collective-bargaining representative, over the objection of dues-paying nonmember employees, to expend funds collected under a union-security agreement on activities unrelated to collective bargaining, contract administration, or grievance adjustment. Many of the implications of the *Beck* decision were clarified by the Board in *California Saw & Knife Works*, 320 NLRB 324 (1995), *enfd.* sub nom. *Machinists v. NLRB*, 133 F.3d 1012 (7th Cir. 1998), *cert. denied* sub nom. *Strang v. NLRB*, 119 S.Ct. 47 (1998).

In *California Saw*, the Board stated that "in general . . . that if a union seeks to apply a union security clause to unit employees, it has an obligation under the duty of fair representation to notify them of their *Beck* rights before they become subject to obligations under the clause . . . ." The Board found

<sup>1</sup> The collective-bargaining agreement between Ryder and the Union runs from July 1, 1995, to June 30, 2000. Art. III requires that all employees become and remain members in good standing of the Union as a condition of employment on and after the 31st day following the beginning of their employment. Ryder is obligated under the contract to discharge employees, who fail to become members or maintain their membership in good standing, upon written notice from the Union.

<sup>2</sup> While the evidence as to what Akimbi told Santana is sparse, Santana does not contend that he was unaware that he had to pay union dues as a condition of his employment. I infer that he has been aware of that fact since early 1997.

<sup>3</sup> At p. 10 of its brief, Respondent states that, "if his employment was in fact terminated, [Santana] was terminated for reasons other than his failure to pay dues." This contention is apparently based on the testimony of Union Steward Joyce Brazenor that Mark Aussubel told her he was looking for a reason to get rid of Santana and that the Union gave him the "ammunition" Aussubel was looking for to let Santana go. I do not credit this testimony. Aussubel was not asked about any other reasons for Santana's termination. Moreover, even if I credited Brazenor, her testimony would indicate that Santana would not have been discharged but for the Union's request that he be terminated for his refusal to pay back dues.

further that a union has an obligation to give a *Beck* rights notice to newly hired nonmember employees at the time the Union seeks to obligate these newly hired employees to pay dues. Current union members must be told of their *General Motors* rights if they have not previously received such notice, in order to be certain that they have voluntarily chosen full membership and a concomitant relinquishment of *Beck* rights, *Paperworkers Local 1033 (Weyerhaeuser Paper Co.)*, 320 NLRB 349 (1995).

The Union's May 26 letter is a blatant violation of the Santana's *General Motors* and *Beck* rights. Given the fact that *General Motors* was decided in 1963 and *Beck* was decided in 1988, I assume that the Union was aware these rights. The issue, therefore, is whether the Union should be precluded from demanding Santana's discharge, despite his unwillingness to pay back dues, due to its failure to comply with its obligations, or whether the Union's failure to comply with *Beck* and *General Motors* can be excused by Santana's unwillingness to pay any back dues. I conclude that Union is barred from invoking the union-security clause and requesting Santana's discharge.

The Board has long held that before a union requests that an employer discharge an employee pursuant to a union security agreement, it has a duty to notify the employee of the precise nature of their obligations to the union, including the amount of money that is owed, e.g., *Philadelphia Sheraton Corp.*, 136 NLRB 888, 896 (1962). Local 251 did not satisfy these requirements. Instead, it demanded that Santana become a full-fledged union member and demanded the payment of both the representational and nonrepresentational portion of his dues—without informing him that he could choose to be a dues-paying nonmember of the Union and object to the payment of the nonrepresentational portion of the Union's dues.<sup>4</sup>

An exception to the *Philadelphia Sheraton* principle appears to have evolved in a line of cases indicating that a union will not be held to strict compliance with the rules for notifying employees regarding dues delinquencies, when to do so would excuse nonpayment by an employee who knowingly evaded his dues obligations, e.g., *Seafarers Great Lakes District (Tomlinson Fleet Corp.)*, 149 NLRB 1114, 1120–1121 (1964), *Teamsters Local 630 (Ralph's Grocery)*, 209 NLRB 117, 124 (1974); *Big Rivers Electric Corp.*, 260 NLRB 329 (1982), *I.B.I. Security*, 292 NLRB 648 (1989); *Communications Workers Local 9509 (Pacific Bell)*, 295 NLRB 196 (1989); *Food & Commercial Workers Local 368A (Professional Services)*, 317 NLRB 352, 354–355 fn. 8 (1995).

Some of these cases excusing a union's failure to fully notify an employee of his or her obligations involve situations in which the employees had knowledge of these obligations from other sources, e.g., *Teamsters Local 630 (Ralph's Grocery)*, and *Big Rivers Electric*. However the basic proposition enunciated in the *Seafarers* case could be extended to allow a Union

to seek the discharge of Santana despite the fact that it never afforded him his *GM* and *Beck* rights.

[W]here the circumstances are such that it may be inferred that but for the union's excessive demand the employee would have made a proper tender and that he was deterred from doing so by the apparent futility thereof, it would be inequitable to deny relief to the employee because of his failure to make such tender. It does not follow that this "futility" rule should be extended to the case of an employee . . . who . . . was an avowed "free rider," and who, it is clear, was not deterred from making a tender by the nature of Respondent's demand, but was motivated solely by his aversion to paying any part of his dues obligations and would not have complied even with a proper demand.

[S]uch a result would not be consistent with the congressional policy underlying Section 8(b)(2) and proviso (B) in Section 8(a)(3). That policy . . . was not to protect free riders against excessive union demands, but rather to insure that employees who were willing to pay their financial obligations were not discharged for improper reasons.

*Seafarers* at 149 NLRB 1120–1121.

On the other hand, it would be inconsistent with *California Saw* to allow a union to demand the discharge of employee before affording the employee his or her rights under *General Motors* and *Beck*. Before requesting the termination of an employee pursuant to a union security agreement, a union must notify the employee of his or her *Beck* and *General Motors* rights, if that employee has not previously received such notice. Only after the employee has the opportunity to exercise these rights may the union seek his or her discharge—regardless of the amount and duration of the employee's delinquency. Had Local 251 advised Santana of these rights in May or June 1998, it would have been able to seek his discharge unless he was willing to commit to a reasonable payment plan for at least the representational portion of his back dues. I see no injustice in holding the Union liable for backpay when it could so easily have avoided this liability by complying with its obligations. Moreover, insistence on compliance with *General Motors* and *Beck* in cases such as Santana's will insure that such rights are afforded employees as was intended by the Supreme Court.<sup>5</sup>

In fashioning an order to remedy this violation, I will recommend that the Board not lose sight of the fact that the Union is entitled to a significant amount of dues money from Santana, even if he chooses to be a nonmember and exercises his *Beck* rights. I will therefore recommend that the Union be allowed to offset any dues it is lawfully owed against the backpay it owes to this charging party. Moreover, once the Union fulfills its

<sup>4</sup> The General Counsel emphasizes the fact that the Union did not give Santana a figure representing the amount of back dues he owed to it. I regard this as relatively unimportant since Santana made it clear he was unwilling to pay any amount of back dues. Moreover, any figure the Union would have given Santana may have been incorrect in light of its failure to provide him his *General Motors* and *Beck* notices.

<sup>5</sup> I do not agree with the General Counsel's argument that the charging parties are not free riders because there is no evidence that they defied the Union's request that they pay their back dues. In this regard I note that current Board precedent holds that a Union may reject a belated attempt to pay back dues and insist that the employer terminate a employee who has not been paying his or her union dues, *General Motors Corp.*, 134 NLRB 1107 (1961), *Acme Fast Freight*, 134 NLRB 1131 (1961). The Union's insistence on the employee's termination is unlawful only if motivated by factors other than his or her dues delinquency.

obligations to notify Santana of his *GM* and *Beck* rights, it has a right to insist, in a nondiscriminatory manner, that his continued employment with Ryder be conditioned upon timely payment of his lawful current and back dues obligations.

#### Alicia Ramos

Alicia Ramos was hired by Ryder in 1989. She applied for membership in the Union and signed a dues-checkoff authorization form on March 27, 1996. The Union waived her initiation fee and Ramos paid her monthly dues on a more or less timely basis through August 1996. On August 19, 1996, Ramos took a withdrawal card, which suspended her obligation to pay dues. She returned to work and returned the withdrawal card to the union hall on October 16, 1996. Ramos, however, did not resume paying her monthly dues.

When she got three months in arrears on December 9, 1996, Ramos' union membership was suspended. She paid the Union \$25 via checkoff on December 16, and the suspension was lifted. In February, Ramos was again three months behind in her dues and was again suspended. This cycle continued until July 2, 1997, when Ramos took another withdrawal card as a paid-up member in good standing.<sup>6</sup>

Ramos returned to work in the fall of 1997, but did not return her withdrawal card to the union hall and did not pay any union dues between July 2, 1997, and October 1, 1998.<sup>7</sup> On May 11, 1998, the Union sent a letter to Mark Aussubel, Ryder's contract manager, informing him that eight employees, including Ramos and Greenwood, were working without being active members of the union in good standing. The letter demanded that the eight appear at the Union hall within 72 hours to pay all dues owed to the Union. The letter stated further that failure of the employees to comply with this demand would lead the Union to instruct Ryder to terminate their employment.

Union Steward Joyce Brazenor handed each of the employees a copy of the May 11 letter on Thursday, May 14.<sup>8</sup> Ramos tore her letter up immediately.<sup>9</sup> Most, or all, of the employees named in the letter took immediate steps to pay all or part of the dues they owed. On May 15, Ramos met with Wally Akimbi, who was an alternate union steward. Akimbi showed Ramos a computer printout indicating that she owed the Union \$250.

<sup>6</sup> Ryder employees who did not work during the summer school period generally took withdrawal cards to stop their dues deductions while they were not working.

<sup>7</sup> Ramos was off work due to illness for 7 months. The record is confused as to when this occurred but I conclude it was from September 1995 to February 1996. This would explain why Ramos did not start paying union dues when the collective-bargaining agreement first became effective.

<sup>8</sup> I credit Ramos' testimony that she was shown the letter on May 14th over that over Brazenor that this occurred on May 12. Ramos was completely forthright in her testimony even with regard to issues on which her testimony does not necessarily cast her in a favorable light. Moreover, the Union's evidence as to when other employees started paying their arrears, although incomplete, is consistent with Ramos' testimony.

<sup>9</sup> In the spring of 1998, a decertification petition was circulating amongst Ryder's employees. The record does not indicate whether any of the charging parties signed this petition or were in favor of it. However, there was some personal animosity between Brazenor and Ramos.

Ramos told Akimbi that she would get a check from her credit union and bring the money to the union hall on Monday.

On Monday morning, May 18, the Union hand delivered a second letter to Mark Aussubel demanding that Ryder terminate Ramos and Greenwood immediately for failure to pay their back dues. After her shift on Monday morning, May 18, Ramos went to the Union hall and tendered \$250 to Union Business Manager Ed Wiggin. Wiggin refused to accept it, telling Ramos she had been terminated.<sup>10</sup>

When Ramos reported to work for her afternoon shift, Mark Aussubel called her into his office and told her that he had to terminate her. Ramos told Aussubel that she had tried to pay the Union and that it refused to take her money. Aussubel sent Ramos home and called his supervisor. He then reinstated Ramos beginning with the afternoon shift of May 19. On May 19 and/or 20, Aussubel met with Wiggin and Brazenor. At one point Wiggin indicated that it would be acceptable to the Union if Ramos and Greenwood paid their dues by the end of that week. However, after being so instructed by the Union's executive board, Wiggin called Aussubel and said the Union was demanding the termination of both employees, and that it would file an unfair labor practice charge against Ryder if they were not terminated.

A week or so after her suspension, Ramos returned to the Union hall with a coworker, Ann DeWare. Ramos offered to pay the Union \$250; DeWare offered the Union between \$60 and \$100 which she had collected from a number of Ryder employees to pay Ann Greenwood's back dues. Wiggin told them that pursuant to his instructions from the Union's executive board, he could not accept the money since the Union was insisting on the termination of Ramos and Greenwood.

Ramos did not work during the summer of 1998, but returned to work in September of that year. On October 1, 1998, she paid \$50 in union dues via checkoff. Shortly thereafter, on October 13, she attended an arbitration meeting regarding the Union's grievance against Ryder alleging that it failed to comply with the collective-bargaining agreement by refusing to terminate Ramos and Greenwood. The grievance was settled by a stipulation agreed to by the two employees that they would pay the Union \$100 by October 16, and \$50 per month thereafter. On October 19, the Union sent Ryder a letter stating that it

<sup>10</sup> After Ramos testified that she tendered payment to the Union, I was skeptical as to her credibility on this issue. Her testimony was not corroborated by other witnesses or documents (although Aussubel testified that Ramos told him about the tender on May 18). Respondent's first witness was Kathye Kiras, who normally receives dues payments at the union hall. In response to a question from the bench and a followup question from Union counsel, Kiras testified that she had never refused to take dues money from anyone. On cross-examination by the General Counsel, Kiras revealed that she was out of work on medical leave between May 13 and June 5. The General Counsel then asked if any union official had told her of attempts by Ramos, Greenwood or Ann Deware (on behalf of Greenwood) to pay dues. Kiras answered in the negative. Business agent Wiggin then testified on direct without mentioning Ramos' attempt to pay on May 18. Not until I asked Wiggin at the conclusion of his direct testimony did he corroborate Ramos' effort to pay on the morning of the 18th. In my view the Union should have stipulated that Ramos tried to pay, either when Ramos testified or when Kiras testified.

had not received these payments and renewing its demand that the two employees be terminated. Ramos paid \$50 in dues to the Union the next day but has not paid anything since. As of the February 11, 1999 trial, she was \$350 in arrears.

Finally, the record indicates that at no time has the Union ever informed Ramos that she could choose to be a dues-paying nonmember of the Union and that if she chose to be a nonmember she could object to the payment of dues that was being used for activities other than collective bargaining, contract administration or grievance adjustment.

#### Analysis with regard to Ramos

Section 8(b)(2) makes it a violation of the Act for a labor organization to cause an employer to discriminate against an employee with respect to whom membership in that organization has been denied or terminated on some ground other than his or her failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership. The record establishes that on May 15, Ramos told Union Steward Akimbi that she would pay her back dues and that she tendered this dues to the Union midday on May 18.<sup>11</sup> The Union refused to accept payment and continued to insist on her termination instead. Faced with this insistence, Ryder suspended Ramos for two shifts.

The complaint alleges an 8(b)(2) violation with regard to the union demand for Ramos' termination on May 18. I conclude this violation has been established. Ramos committed to pay her arrears the day after payment was demanded by the Union. By refusing her payment the following working day, the Union did not provide her a reasonable opportunity to pay her back dues, *Carpenters Local 296 (Acrom Construction)*, 305 NLRB 822 (1991). Moreover, the record does not provide a basis for distinguishing Ramos' situation and that of the other employees named in the Union's May 11 letter. Given the fact that the Union was told that Ramos was obtaining the funds to pay her back dues on May 15, I infer that for its insistence on her termination was motivated by something other than her delinquency. See *General Motors Corp.*, 134 NLRB 1107 (1961).

I also find that the Union violated Section 8(b)(1)(A), as alleged, in seeking to apply its union-security clause to Ramos prior to notifying her that she could choose to be a dues-paying nonmember of the Union and that if she chose to be a nonmember she had the opportunity to object to paying that portion of the dues that would be allocated to nonrepresentational activities.<sup>12</sup>

As with Santana, the Union is entitled to a significant amount of dues money from Ramos even if she exercises her *Beck* rights. I will therefore recommend that the Union be allowed to offset any dues it is owed against the backpay it owes

to Ramos. Moreover, once the Union fulfills its obligations under *General Motors* and *Beck*, it has a right to insist, in a nondiscriminatory manner, that her continued employment with Ryder be conditioned on timely payment of her lawful current and back dues obligations.

#### Ann Greenwood

Ann Greenwood has been a bus driver with Ryder since January 1995. She joined the Union and signed a checkoff authorization form in the summer of 1995, at the time the collective-bargaining agreement went into effect. At no time did the Union explain to Greenwood that she could be a nonmember dues payer or that if she chose to be a nonmember she could object to paying that portion of the dues that was allocated to nonrepresentational activities.

Greenwood paid her dues on a regular basis through July 2, 1997, when she took a withdrawal card. However, when she returned to work in September 1997, her dues were not deducted via checkoff and she did not pay her dues in any other manner. By May 1998, Greenwood was over \$200 behind in her dues payments.

On May 14, Union Steward Brazenor gave Greenwood a copy of the Union's May 11 letter to Aussubel. Greenwood met with Wiggin and Akimbi and promised to pay \$30 a week beginning Friday, May 15. However, she did not attempt to make any payments prior to sometime around May 25.<sup>13</sup> Aussubel suspended Greenwood on May 18. She did not work the afternoon shift on that day or the morning shift on May 19. On May 19, Greenwood told Aussubel that she had planned to go to the Union hall on the day before, but that her van broke down. She did not tell the Union about her vehicle problems. Aussubel allowed Greenwood to return to work for the afternoon shift on May 19, and lifted the suspension.

Greenwood's coworker, Ann DeWare, took up a collection for Greenwood. On or about May 25, DeWare went to the union hall and tendered between \$60 and \$100 to Wiggin on Greenwood's behalf. Wiggin refused to accept the money.

Greenwood did not work during the summer of 1998 but returned to work in the fall. She attended the arbitration proceeding between Ryder and the Union on October 13. Like Ramos, Greenwood agreed to pay \$100 by October 16, and \$50 per week afterwards. On October 19, the Union renewed its demand for Greenwood's termination, citing her failure to live up to the arbitration settlement. Thereafter, Greenwood and DeWare made dues payments of \$50 on October 22, and DeWare paid another \$10 on Greenwood's behalf on November 2. Forty dollars was deducted by Ryder for union dues on December 21, which was the last payment made prior to the instant hearing. By the date of the hearing, her arrearage was almost \$300.

#### Analysis with regard to Greenwood

Greenwood's situation differs from that of Ramos in that she never attempted to pay the Union any dues before her suspension. Nevertheless, the Union violated Section 8(b)(2) in seek-

<sup>11</sup> I consider Akimbi to be an "agent" of the Union. The record establishes his "apparent authority" to act on its behalf.

<sup>12</sup> Whether the apparent unwillingness of Ramos and Greenwood to pay any dues excuses the Union's failure to comply with its obligations is dealt with in my discussion of Santana's case. The Union argues that *California Saw* should not be applied retroactively to Ramos and Greenwood, who were hired before the case was decided. This argument has no merit since the Union invoked its union-security clause against these employees long after the Board decided *California Saw*.

<sup>13</sup> Greenwood had to pay towing charges for two different cars on May 15 and 18, which she cites, along with her pregnancy, as the reason she did not make the promised payments to the Union.

ing her dismissal and Section 8(b)(1)(A) in seeking to invoke the union-security clause as to Greenwood, prior to notifying her of her *General Motors* and *Beck* rights.<sup>14</sup> As in the case of Santana and Ramos, the Union should be allowed to offset whatever dues Greenwood owes against the backpay that it owes to this charging party. This determination can be made only after she decides whether to be a full member, or dues paying nonmember, and whether she exercises her *Beck* rights if she chooses to be a nonmember. Moreover, after fulfilling its obligations, the Union has a right to insist, on a nondiscriminatory basis, that Greenwood's continued employment with Ryder be conditioned upon timely payment of her lawful current and back dues obligations.

<sup>14</sup> In view of this conclusion, I deem it unnecessary to decide the General Counsel's allegation that Respondent violated the Act in pursuing its grievance concerning Ryder's failure to terminate Greenwood and Ramos to arbitration. Even if this constitutes a violation it is duplicative of the allegations decided herein.

On the other hand, I decline to find that Respondent violated Sec. 8(b)(1)(A) and (2) by seeking payment of back dues from Ramos and Greenwood, rather than by seeking payment exclusively from Ryder. The General Counsel's argument relies on the Board's decision in *Producers Transport, Inc.*, 125 NLRB 1056 (1959), enf. denied 284 F.2d 438, 441 (7th Cir. 1960). Given the Board's adoption in *John J. Roche & Co.*, 231 NLRB 1082 (1977), of a judge's decision which relied on the Seventh Circuit decision in *Producers Transport*, I conclude that *Producers* is no longer considered precedential by the Board. Even if it were, I would decline to adopt the General Counsel's argument in the instant case since Ryder's failure to deduct Ramos and Greenwood's dues was the result of their failure to return their withdrawal card to the Union when they resumed work. Neither employee contended that this was an oversight, and I conclude that both knowingly avoided their dues obligations. Their failure to pay dues since May 18, supports the inference that their failure to pay prior to that date was intentional.

#### CONCLUSIONS OF LAW

1. Respondent, IBT Local 251, violated Section 8(b)(1)(A) and (2) in requesting that Ryder Student Transportation discharge Alicia Ramos on May 18, 1998.

2. Respondent violated Section 8(b)(1)(A) and (2) in causing the suspension of Alicia Ramos on May 18–19, 1998.

3. Respondent violated Section 8(b)(1)(A) and (2) in requesting the termination of Ann Greenwood on May 18, 1998.

4. Respondent violated Section 8(b)(1)(A) and (2) in causing the suspension of Ann Greenwood on May 18–19, 1998.

5. Respondent violated Section 8(b)(1)(A) and (2) in requesting and causing the June 10, 1998 termination of Francisco Santana.

6. Respondent violated Section 8(b)(1)(A) in attempting to collect dues from Ramos, Greenwood, and Santana without notifying them of their rights under *General Motors* and *Beck*.

#### THE REMEDY

Having found that IBT Local 251 unlawfully caused Ryder Student Transportation to suspend Alicia Ramos and Ann Greenwood and unlawfully discharge Francisco Santana, it is recommended that the Union make these employees whole for any loss of wages and benefits they may have suffered as a result of the Union's action, less their net interim earnings and less the dues they owe the Union after the charging parties have an opportunity to exercise their rights under *General Motors* and *Beck*. The amount of backpay shall be computed with interest as provided for in *New Horizons for the Retarded*, 283 NLRB 1173 (1173).

[Recommended Order omitted from publication.]